

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 7
 11201 RENNER BOULEVARD
 LENEXA, KANSAS 66219

IN THE MATTER OF:)	
)	
U-Pick-It, Inc.)	
7700 E. Winner Rd)	
Kansas City, MO 64125)	<u>CONSENT AGREEMENT</u>
)	<u>AND FINAL ORDER</u>
Respondent.)	RCRA-07-2014-0009
)	CWA-07-2014-0048
)	TSCA-07-2014-0014
Proceeding under Sections 3008(a) and (g) of)	
the Resource Conservation and Recovery)	
Act as amended, 42 U.S.C. § 6928(a) and (g);)	
Section 309(g) of the Clean Water Act,)	
33 U.S.C. § 1319(g); and Section 16(a) of the)	
Toxic Substances Control Act, 15 U.S.C. § 2615(a).)	
_____)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and U-Pick-It, Inc., (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42

U.S.C. § 6928(a) and (g); Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g); Section 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"), 15 U.S.C. Section 2615(a) and in accordance with the Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA

has reason to believe that Respondent violated Revised Statutes of Missouri Section 260.370 and Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations promulgated there under.

2. This CAFO serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated there under.

3. This CAFO serves as notice that the EPA has reason to believe that Respondent has violated federal regulations addressing the manufacture, processing, use, distribution in commerce, disposal, storage, marking and notification and manifesting of polychlorinated biphenyls (hereinafter "PCBs"), 40 C.F.R. Part 761 promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605(e), and thereby has violated Section 15 of TSCA, 15 U.S.C. § 2614.

Parties

4. The Complainant is represented herein through the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA; and the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7, as duly delegated from the Administrator of the EPA.

5. At all times herein, the Respondent, U-Pick-It, Inc. (hereinafter "Respondent"), has been a corporation authorized to do business within the state of Missouri and has been incorporated under the laws of the state of Missouri. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 502(5) of the CWA, 33 U.S.C. § 1362(5); and 40 C.F.R. § 761.3, which was promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605(e).

Statutory and Regulatory Framework

RCRA

6. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261.

7. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the

provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

8. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004 through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

CWA

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

10. Section 309(g)(2)(B) of CWA, 33 U.S.C. § 1319(g), authorizes a “Class II” civil penalty of up to \$10,000 for each violation of the CWA up to a maximum of \$125,000. Each day that such a violation continues constitutes a separate violation of Section 309(g)(2)(B) of the CWA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory per day maximum for penalties to \$16,000, for violations that occurred from January 12, 2009 through December 6, 2013, and increased the limit for administrative “Class II” penalty actions during that same time period to \$177,500.

11. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, 33

U.S.C. § 1342(p), requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

13. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

14. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

15. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity,” in part, as facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards.

16. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

17. The MDNR issued a General Permit for the discharge of stormwater at Respondent’s Facility under the NPDES, Permit No. MOR-60A347. This General Permit became effective on June 12, 2012. This General Permit governs discharges of “pollutants” into the Blue River, a “navigable water of the United States”, as those terms are defined by CWA Section 502, 33 U.S.C. § 1362. On December 4, 2012, Pick-n-Pull Auto Dismantlers, Kansas City, LLC, applied for and received a transfer of Respondent’s NPDES permit for the Facility.

TSCA

18. Section 6 of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated there under, found at 40 CFR Part 761, regulate the processing, distribution in commerce, use and disposal of polychlorinated biphenyls (PCBs). When the EPA determines that any person has violated or is in violation of Section 6 of TSCA, 15 U.S.C. § 2605(e), or the regulations promulgated there under, and thereby has violated Section 15 of TSCA, 15 U.S.C. § 2614, EPA may issue an order assessing a civil penalty for such violations pursuant to Section 16 of TSCA, 42 U.S.C. § 2615.

19. Section 16(a) of TSCA, 15 U.S.C. Section 2615, authorizes a civil penalty of up to \$25,000 per day for each violation of the Act. This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19,

so that penalties of up to \$32,500 per day are authorized for violations of Section 16(a) of TSCA, 15 U.S.C. Section 2615 that occur after March 15, 2004 through January 12, 2009. For violations of Section 16(a) of TSCA, 15 U.S.C. Section 2615 that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

20. Pursuant to 40 C.F.R. § 761.3, a PCB transformer is any transformer that contains ≥ 500 ppm PCBs.

21. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations ≥ 50 ppm PCBs constitute the disposal of PCBs.

22. Pursuant to 40 C.F.R. § 761.60(a), liquids containing a PCB concentration of 50 ppm or greater must be disposed of by the methods specified in that section.

23. Pursuant to 40 C.F.R. § 761.65(a)(1), any PCB waste shall be disposed of as required by law within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins.

General Factual Allegations

24. At all times relevant herein until December 19, 2012, Respondent owned and operated an automobile salvage facility (Facility) at 7700 Winner Road, Kansas City, Missouri. At the time of the inspection, the Facility encompassed approximately 13 acres, was operating seven days a week and there were approximately 20 employees working at the facility. The Facility is adjacent to the Blue River.

RCRA

25. On February 9-10, 2012, the EPA conducted a routine compliance evaluation inspection (EPA RCRA Inspection), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. At the time of the EPA RCRA Inspection, it was observed that Respondent generated waste automotive fluids and other waste from salvaged automobiles at the Facility. Much of this waste meets the definition of a “solid waste”, as defined by 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261. Such waste included, but is not limited to, waste gasoline, spent ampoules and switches containing mercury and spent lamps containing mercury.

26. During the course of the EPA RCRA Inspection, the EPA inspector observed violations of RCRA which are set forth within this CAFO.

CWA

27. The Facility is located along the eastern bank of the Blue River, separated by a railroad track and Wilson Road. The Blue River is a permanent stream where U-Pick-It discharges and is designated by Missouri state regulation as a “Metropolitan No-Discharge Stream”, which means that stormwater discharges not in compliance with permit conditions are prohibited. The Blue River is classified with designated uses of livestock and wildlife watering, aquatic life protection and human health (fish consumption and whole body contact recreation), and industrial uses. It is impaired for bacteria from urban runoff and storm sewers. The Blue River is a “navigable water of the United States”, as that term is defined by CWA Section 502, 33 U.S.C § 1362.

28. At the time of the EPA RCRA Inspection, and continuing to the present, surface drains associated with five outfalls have collected stormwater from the mostly flat salvage yard and direct it either through underground pipe or road ditch directly into the Blue River. From the Facility, the Blue River flows north approximately 2.5 miles to its confluence with the Missouri River.

29. During the EPA RCRA Inspection the inspector observed possible violations of the CWA from apparent discharges of automobile related waste into on-site stormwater drains. The EPA Region 7 unit that is responsible for conducting inspections and enforcement under the CWA was notified of these potential violations.

30. On December 19th and 21st, 2012, in response to the observations made by the EPA inspector during the EPA RCRA Inspection, EPA conducted an inspection of the Site (EPA CWA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of this inspection was to evaluate the management of stormwater at the Facility in accordance with the CWA.

31. During the course of the EPA CWA Inspection, the EPA CWA inspector observed violations of the CWA which are set forth in this CAFO.

32. Stormwater, and runoff water from Facility goes into the Blue River. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

33. Stormwater from the Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

34. The Facility has “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(vi), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

35. Respondent discharged pollutants from a point source at the Facility into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

36. Stormwater runoff from Respondent’s Facility results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

37. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

38. On December 19th, 2012, the first day of the EPA CWA Inspection, ownership of the Facility was transferred from Respondent to Pick-n-Pull Auto Dismantlers, Kansas City, LLC.

39. At the time of the EPA RCRA Inspection, the Facility did not have a stormwater permit. On May 21, 2012, Respondent applied for an NPDES permit and MDNR issued a General Permit for the discharge of stormwater at Respondent’s Facility under the NPDES, Permit No. MOR-60A347 on June 12, 2012. This General Permit governs discharges of “pollutants” into the Blue River, a “navigable water of the United States”, as those terms are defined by CWA Section 502, 33 U.S.C § 1362.

TSCA

40. On or about January 30, 2009, an authorized representative of EPA, acting under a grant from EPA, conducted an inspection pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, of Respondent’s Facility (EPA TSCA Inspection).

41. During EPA TSCA Inspection, the EPA representative observed, photographed, and collected documentary evidence regarding PCBs and PCB Items used, stored, and disposed of by Respondent.

42. During the EPA TSCA Inspection, the EPA representative observed two ITE Non-flammable liquid filled transformers, Serial Numbers (hereinafter S/N) 7331-59 and 7332-59. Non-flammable liquid is a generic name for oil containing PCBs of 500 part per million (hereinafter ppm) or greater.

43. During the EPA TSCA Inspection, the EPA representative observed evidence of oil leakage onto the surface of the drain valve of ITE transformer, S/N 7331-59. Leakage of PCB oil onto the drain valve constituted disposal of PCBs in a manner other than that required by 40 C.F.R. § 761.60(a).

44. During the EPA TSCA Inspection, the EPA representative observed evidence of PCB oil leakage onto the surface of soils constituted disposal of PCBs in a manner other than that required by 40 C.F.R. § 761.60(a).

45. Final disposal of the PCB waste was not accomplished until September 2012. That was more than one year after the date it was determined to be PCB waste, it was removed from service, and the decision was made to dispose of it.

Violations

RCRA

46. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as set forth below.

Count 1

FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION

47. The allegations stated above are re-alleged and incorporated as if fully set forth herein.

48. The regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11 require that a person who generates a solid waste must determine if that waste is a hazardous waste at the point it is generated.

49. At the time of the EPA RCRA Inspection it was determined that the Respondent failed to make a hazardous waste determination of the following solid waste streams at the Facility in violation of the regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11:

- a. Switches and Ampoules containing mercury;
- b. Spent lamps containing mercury;
- c. Waste gasoline stored in open secondary containment.

50. Failure to abide by the regulations at 10 C.S.R. 25-5.262(1) and by incorporation 40 C.F.R. § 262.11, is a violation of RSMO 260.370 and Section 3002 of RCRA, 42 U.S.C. §

6922. A violation of those sections authorizes an enforcement action under RCRA Sections 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).

CWA

51. Complainant hereby states and alleges that Respondent has violated the CWA and federal and state regulations promulgated thereunder, as set forth below.

52. The allegations stated above are re-alleged and incorporated as if fully set forth herein.

Count 2

DISCHARGE WITHOUT A PERMIT

53. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

54. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity”, in part, as the “recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

55. The EPA RCRA Inspection found that the Facility had allowed spills of oily substances to migrate over soil and/or concrete into storm drain inlets located onsite, which drain via stormwater to the Blue River.

56. At the time of the EPA RCRA Inspection, Respondent did not have an NPDES permit for stormwater and one until June 2012.

57. Respondent’s discharge of stormwater from the Facility without a permit is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and regulations promulgated thereunder.

Count 3

FAILURE TO CLEAN UP SPILLS WITHIN 24 HOURS

58. Missouri NPDES General Operating Permit, Requirements, Paragraph 7, under which Respondent operated the Facility after June 2012, states in part that “All spills must be

cleaned up within 24 hours. This may include the excavation and disposal of contaminated soils.”

59. During the EPA CWA Inspection the inspector observed ground discoloration caused by spills of petroleum derived wastes and other automotive fluids throughout the facility’s outdoor grounds. Based on the appearance of the stained soils, these spills had been present for more than 24 hours but had not been cleaned up.

60. This finding occurred within the period of the facility’s coverage under the NPDES permit.

61. Respondent’s failure to clean up spills within 24 hours is a violation of the stormwater permit, and thus a violation of Section 402 of the CWA § 1342, and regulations promulgated thereunder.

Count 4

FAILURE TO REPORT SPILLS WITHIN 24 HOURS

62. Missouri NPDES General Operating Permit, Requirements, Paragraph 7(a), under which Respondent operated the Facility after June 2012, states that the following spills must be reported to the department within 24 hours: “Any spill of fluids or chemicals that leaves the property of the facility.”

63. During the EPA CWA Inspection the inspector observed and documented that surface runoff of spilled fluid from under stored vehicles in the north storage yard had migrated from the stored vehicles to an outfall leading to the Blue River.

64. Respondent did not report the spills described in the above paragraph to MDNR.

65. Respondent’s failure to report spills within 24 hours to MDNR is a violation of the stormwater permit, and thus a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Count 5

FAILURE TO REMOVE BATTERIES, FLUIDS, AND FUELS

66. Missouri NPDES General Operating Permit, Requirements, Paragraph 10, under which Respondent operated the Facility after June 2012, states that “Upon dismantling of vehicles and before crushing of vehicles, batteries, fluids, and fuels shall be removed except in

sealed units that will remain intact, such as; engines, steering gear units, transmissions and other drive-train component units such as; transfer cases and rear ends that may be stored with the intention of sale as a complete unit.”

67. Missouri NPDES General Operating Permit, Requirements, Paragraph 11, under which Respondent operated the Facility after June 2012, states that “If a mechanical unit (engine, transmission, steering gear, transfer case, etc.), or system (brake, cooling, drive train) remains closed, and are to remain intact and there is no likelihood of leakage or spillage, the fluid need not be drained.”

68. During the EPA RCRA Inspection and again during the CWA Inspection the inspectors observed that the ground discoloration due to spillage of automotive fluids, as described above for violations in Counts 4 and 5 above, were due to failure of the facility to drain fluids or chemicals from mechanical parts that were not going to remain intact.

69. During the EPA RCRA Inspection and again during the CWA Inspection the inspectors observed a number of automotive batteries exposed to the elements on facility grounds. These batteries had not been removed prior to the start of dismantling, as they had been taken out of the vehicles after the vehicles were parked on the grounds for dismantling.

70. Respondent’s failure to remove batteries, fluids, and fuels from the vehicles and their components, in cases where those components did not remain intact and there was a likelihood of leakage or spillage, is a violation of the stormwater permit, and thus a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Count 6

FAILURE TO MARK OUTFALLS

71. Missouri NPDES General Operating Permit, Requirements, Paragraph 15, under which Respondent operated the Facility after June 2012, states that “All outfalls must be clearly marked in the field.”

72. During the EPA CWA Inspection the inspector observed that neither of the two outfalls identified in the NPDES permit, under which Respondent operated the Facility after June 2012, nor any of the other four stormwater inlets that drain offsite, were marked in any way as outfalls.

73. Respondent’s failure to mark outfalls in the field is a violation of the stormwater permit, and thus a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Count 7

FAILURE TO SUBMIT AN ANNUAL REPORT

74. Missouri NPDES General Operating Permit, Annual Reporting, under which Respondent operated the Facility after June 2012, states in part that “An annual operating report must be submitted by October 28 of each year to the appropriate Regional Office. The report shall detail any unusual occurrences such as spills, tank failures or overflows, ruptured piping, fish kills, fire fighting activities, or other upsets which resulted in any loss of product. The report must also indicate if nothing unusual has occurred.”

75. During the EPA CWA Inspection the inspector observed that the facility did not submit an annual report to MDNR by October 28, 2012, which was Respondent’s first annual report due date since issuance of the permit at the Facility in June 2012.

76. Failure to submit an annual report is a violation of the stormwater permit, and thus a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Count 8

TSCA

77. Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as set forth below.

78. The allegations stated above are re-alleged and incorporated as if fully set forth herein.

FAILURE TO DISPOSE OF PCB WASTE WITHIN ONE YEAR

79. During the January 30, 2009 EPA TSCA Inspection, the EPA representative observed, photographed, and collected documentary evidence regarding PCBs and PCB Items used, stored, and disposed of by Respondent.

80. During the EPA TSCA Inspection, the EPA representative observed oil containing PCBs of 500 part per million or greater leaking from transformers and onto soil constituting disposal of PCBs in a manner other than that required by 40 C.F.R. § 761.60(a).

81. Final disposal of the PCB waste was not accomplished until September 2012, which was more than one year after the date it was determined to be PCB waste, was removed from service, and the decision was made to dispose of it.

82. Pursuant to 40 C.F.R. § 761.65(a)(1), any PCB waste shall be disposed of as required by law within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins.

83. Respondent failed to comply with the requirements of 40 C.F.R. § 761.65(a)(1), promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and therefore violated Section 15 of TSCA, 15 U.S.C. § 2614(1).

III. CONSENT AGREEMENT

84. Respondent and EPA agree to the terms of this CAFO. This CAFO shall constitute the complete agreement between the parties respecting the subject matter hereof.

85. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO.

86. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

87. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of this CAFO.

88. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

89. This CAFO addresses and resolves all civil claims for the violations and facts alleged above.

90. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

91. The effect of settlement is conditioned upon the accuracy of the Respondent's

representations to EPA set forth in this CAFO.

92. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

93. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated civil penalty of Ninety Thousand Six Hundred Nine Dollars (\$90,609), as set forth in Paragraph 1 of the Final Order below.

94. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

95. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

96. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Effective Date

97. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

98. Except as expressly provided in this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of Subchapter III of RCRA (Hazardous Waste Management), for each day of non-compliance with the terms of the Final Order, or to seek any

other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$37,500 per day are authorized for violations of Subchapter III of RCRA that occur after January 12, 2009.

99. Complainant reserves the right to take enforcement actions against Respondent for any future violations of RCRA, the CWA and their implementing regulations and to enforce the terms and conditions of this CAFO. Respondent reserves all defenses it may have to any such enforcement action.

100. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

101. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

102. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

103. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); and Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a); and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a

civil penalty of Ninety Thousand Six Hundred Nine Dollars (\$90,609). The payment must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the “due date”). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier’s check made payable to the “United States Treasury” and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

3. A copy of the payment documentation shall also be mailed to EPA’s to the following:

Regional Hearing Clerk
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Raymond C. Bosch
Office of Regional Counsel
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

5. This Final Order portion of this CAFO shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Donald Toensing
Chief
Waste Enforcement and
Materials Management Branch
Air and Waste Management Division

Date

Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Raymond C. Bosch
Assistant Regional Counsel

FOR RESPONDENT:

U-PICK-IT, INC.

Date: _____

Name and Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

Date

Karina Borromeo
Regional Judicial Officer